(1)

NO. 90-335

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

GERALD M. SPARKS, PETITIONER

V

CHARACTER & FITNESS COMMITTEE OF KENTUCKY

DEFENDANTS-APPELLEES

SPECIFY:

TOMMY BELL-CHAIRMAN OF THE CFC

JUNIUS BEAVER JR.

GRANT HELMAN

WILLIAM BAIRD III

STUART E. LAMPE

PAT GILL, SECRETARY TO THE BOARD

DEFENDANTS ARE SUED INDIVIDUALLY AND COLLECTIVELY

ON PETITION FOR WRIT OF CERTIORARI TO THE

SUPREME COURT OF KENTUCKY

PETITION FOR CERTIORARI

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NEW QUESTIONS PRESENTED

A) WILL THE US SUPREME COURT OR THE CORRUPT KENTUCKY SUPREME COURT HAVE THE FINAL SAY IN THIS VERY IMPORTANT CIVIL RIGHTS ISSUE?

B) FOR THE REASONS STATED IN THIS BRIEF SHOULDN'T THE PETITIONER, MR. SPARKS BE ADMITTED TO THE KENTUCKY BAR?

C) ISN'T THE NEW 1989-90 KENTUCKY BAR EXAM APPLICATION UNCONSTITIONAL? (see exhibit # 5) The new application was written after PETITIONER SUED THE CHARACTER AND FITNESS COMMITTEE.

D) CAN THE KENTUCKY SUPREME COURT CONTRACT AWAY THEIR CIVIL LIABILITY ON THE NEW BAR APPLICATION?

E) SHOULDN'T THE FORRESTER V WHITE 484 US ___, (1988), 98 L. ED 2d 555, be APPLIED TO THIS CASE? THE US SUPREME COURT SAID IT SHOULD! BY A 8-0 vote, your docket # 87-275.Didn't THE US 6th CIRCUIT MISAPPLY THE LAW WHEN THEY FAILED TO APPLY THE FORRESTER CASE TO THIS CASE AFTER BEING INSTRUCTED AND MANDATED TO DO SO BY THE US SUPREME COURT?

F) WHEN A MERE LAWYER INTERVIEWS A PROSPECTIVE BAR

MEMBER BEFORE. HE TAKES ANY EXAM, ISN'T THAT AN ADMINISTRATIVE FUNCTION?

G) THIS CASE SHOULD NOT BE BARRED FOR RECONSIDERATION BY THE US SUPREME COURT BECAUSE OF RES JUDICATA. REASON-THE PARTIES ARE NOT THE SAME. THE US 6th CIRCUIT TALKED ABOUT JUDGE STEVENS OF THE KENTUCKY SUPREME COURT AND HE WAS NOT A PARTY TO THIS LITIGATION.

H) HOW CAN THE LOWER COURT , THE US 6th CIRCUIT REVERSE THE HIGHEST COURT IN THIS COUNTRY, NAMELY THE US SUPREME COURT?

I) HOW CAN A PROSPECTIVE BAR MEMBER BE DENIED HIS RIGHT TO PRACTICE LAW WITHOUT ANY PROCEDURAL DUE PROCESS EVER BEING AFFORDED ?

QUESTIONS PRESENTED

I. Did the U.S. Court of Appeals, 6th Circuit, fail to apply Supreme Court Case Law to this case thereby violating Appellant's 5th, 6th, 8th and 14th amendment rights when:

1. Appellant was never afforded notice of a hearing, nor was he ever given a due process hearing following his interview and subsequent rejection by the Character and Fitness Committee (CFC).

2. The Appellant was permitted to study, prepare and pay his fee to take the bar examination on four separate occasions, unaware of a "blackball" letter in his folder dating back to the 5-minute CFC interview of 1/28/80.

3. Appellant should have been informed of and given a copy of the letter issued by the CFC prohibiting him from ever being admitted to the Kentucky Bar.

4. No procedural or substantive due process was provided to Appellant.

5. The CFC interview should not provide one man with the legal right, after a 5-minute interview, to blackball an applicant without providing him with due process.

II. How can the Immunity Defense apply to the CFC? Isn't it an administrative rather than a judicial function, and why was a new Kentucky Supreme Court rule written regarding immunity after suit was filed by Appellant?

III. Is the One-Man CFC Above the Law?

IV-Whydidn't the three Judge panel at the 6th Circuit follow FORRESTER V WHITE 484 US _____ (1988) as instructed & mandated to do by the US Supreme Court? This case was before the US SUPREME COURT, during the OCTOBER 1987 term. Petitioner received 8-0 vote in his favor from this court. The Character & Fitness Committee, has no immunity for blackballing prospective bar applicants before they take any exam, when they place a letter in applicants file not to pass this man.

V-This case should be considered to be a landmark case. Does a mere lawyer have immunity from civil liability when it can be proven he black-balled a prospective bar applicant by placing a letter in his file, before the applicant took any bar exam?

VI-Why does the three Judge panel keep insisting that the chief Justice of Kentucky Supreme Court, was sued, when in fact he was not named in the complaint?

TABLE OF CONTENTS

ADDITIONAL TABLE OF AUTHORITIES

page

PULLMAN V SWINT — b, c

456 US 273 (1982)

HASKINS V DEPT. OF [redacted] — b, c

808 F. 2d 1192

6 th Circuit 1987

DESHANEY V WINNEBAGO COUNTY — d , k

489 US ____

103 L. Ed 2d 412

CANTON V HARRIS — d, k

489 US ____

LEACH V SHELBY COUNTY SHERIFF — d, k

6 th Circuit 12-20-89

19 sixth circuit review 2. P 4

PLEASANT V ZAMIESKI — k

6 th Circuit 2-8-90

19 Sixth circuit Review 5 P. 2

FORRESTER V WHITE — c,e,k , m

484 US ____ (1988)

98 L. ED 555

SPARKS V CHARACTER & FITNESS COMMITTEE — 1,

98 L. ED 2d 757 (1988)

ADDITIONAL TABLE OF AUTHORITIES

TABLE OF AUTHORITIES PAGE

EXHIBITS

1-CFC letter regarding the Appellant
2-Courier Journal newspaper article on sponsors and mentors.
3-Kentucky supreme court rules
2.060
3.160 (4)
4-Courier Journal on FBI
5-New Kentucky Bar Exam application
6-ORDER FROM US 6 th circuit whereby Judge Stephens of the Ky. Supreme court was dismissed from this law suit in 1985 and before the US 6 th circuit wrote their opinion.

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

GERALD M. SPARKS
PETITIONER
V
CHARACTER & FITNESS COMMITTEE
DEFENDANTS, APPELLEE

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT

PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

This case comes to you directly from the Kentucky Supreme Court.

The petitioner of the appellant-petitioner respectfully pleads that a writ of certiorari be issued to review the order of the Kentucky Supreme Court entered proceedings on 4-26-90 and 6-28-90. The Kentucky Supreme Court denied petitioner admission to the Kentucky Bar after the petitioner obtained a 8-0 vote in his favor from the US Supreme Court. Your docket # 87-275.

PETITION FOR CERTIORARI (CONTINUED)

In addition, REVIEW THE JUDGMENT AND OPINION OF THE FEDERAL COURT AT THE 6 th circuit entered in these PROCEEDINGS ON OCTOBER 18 th, 1988. The judgment and opinion of the FEDERAL COURT WENT AGAINST US SUPREME COURT CASE LAW AND AGAINST THE INSTRUCTIONS AND MANDATE ISSUED BY THE US SUPREME COURT, SUPREME COURT DOCKET # 87-275.

OPINION BELOW

The opinion of the 6 th circuit is cited as SPARKS V CHARACTER & FITNESS COMMITTEE.

_____ SOUTHWESTERN 2d _____ (Ky. 1987).

108 S CT 538 (1988)

JURISDICTION

The order of the Ky. Supreme court was entered on 4-26-90 and 6-28-90.

The judgment of the 6th circuit, Federal Court, was entered on 10-18-88. This petition of certiorari to the Supreme Court, state of Kentucky, is filed herein within (90) days of the judgment below. This court's jurisdiction is invoked under 28 U.S.C. 1257 (3) AND UNITED STATES V MENDENHALL 446 US 544, 64 L.ED 2d 497, 100 S CT 1870 (1980).

CONSTITIONAL PROVISIONS INVOLVED

The 5 th, 6th, 8th, and 14th amendments.Namely, the right of a bar applicant to be entitled to

A)NOTICE OF A DUE PROCESS HEARING,

B) To HAVE A DUE PROCESS HEARING.

It is cruel and unusual punishment under the 8th amendment to allow a man to study and prepare for the Kentucky Bar Exam four times, take his money for the exam, and

knew from day one he would never be passed on the exam.

The 6th amendment right of confrontation was never offered to the Appellant.

STATEMENT OF THE CASE

Appellant filed suit in Federal Court in Louisville, Kentucky. Δ^{1st} Motion for Summary Judgment was granted; Appellant appealed to the 6th Circuit; during oral argument the three-judge panel told the Appellees, "You boys have no defense! Are you better than U.S. Congressmen? They have no immunity from civil liability; Are you better than the AMA (American Medical Association)?" The Federal Court told them the AMA has no immunity from civil liability. The Court said, "if you have a secretary, would she have immunity from civil liability?" The Court said the answer is "no". The only question the Federal Court asked the Appellant is "did you have notice of a hearing, and did you have a due process hearing." The answer was, "no, I

did not." The federal court stated one thing in open court and went behind closed doors one year later and gave the Character & Fitness Committee (CFC) immunity from civil liability. Now the Appellant appears before this respected Court and asked this court to:

A) Waive him into the Kentucky Bar

B) Award him $2,800,000 in damages under Federal rule 11.

C) allow petitioner a trial to determine his damages

D) Declare the new 1989-90 Kentucky Bar application unconstitional.

STATEMENT OF FACT

This is a case of first impression before this respected court. When this court applies the law to the facts, this case should represent a landmark decision in this country.

For a brief summation of the facts. From day one 1-28-80, the day of the Appellant's CFC one man interview, interviewer, Junius Beaver Jr., after a 5 minute interviewbblackballed the appellant. Beaver arbitrarily and capriciou sly sent a letter to the KY Board of Bar Examiners blackballing

appellant based upon information that was supplied to Beaver by the Appellant. The letter was then

placed in applicant's folder preventing him from ever being passed on the Kentucky Bar Exam. Interviewing prospective bar members in the past has been a mere formality and, at best, represents an administrative function.

The Appellant never received any notice of a hearing, nor was any due process hearing afforded to the Appellant. The Kentucky Board of Bar Examiners took Appellant's money four times for the bar exam, knowing that because of a letter placed in his file, they never intended to pass him. This Appellant was in fact blackballed by his CFC interviewer and was never given a fair and equal opportunity of being passed.

The CFC willfully, wantonly, maliciously and intentionally violated the Appellant's basic and fundamental Constitutional rights. Appellant was never provided with a copy of the above letter and it was never intended for the Appellant to find the letter in his folder.

The Kentucky Supreme Court rule in exis-

tence when the Appellant sued the Appellees was Rule 2.060 entitled, Committee's Decision as to Eligibility. That rule says the decision of the Character & Fitness Committee as to the eligibility of an applicant for admission to the Bar of this state shall be final unless, on motion of the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court, upon review of the record, overrules such decision.

Beaver, Jr. was the Appellant's Character & Fitness Committee. He never gave the Appellant ANY NOTICE OF A HEARING, NOR DID HE PROVIDE HIM WITH A DUE PROCESS HEARING. He intentionally caused a letter to be placed in Appellant's folder preventing him from ever being passed on the Kentucky Bar Exam.
Not only did the Appellant find the letter in his folder that said, "Do not pass," when you read it in conjunction with the Kentucky Supreme Court rule in existence at the time the

letter was written, he also saw "Do not pass" written on the outside of his folder.

After the Appellant sued the appellees, a new Kentucky Supreme Court rule (3.160(40) was written in an attempt to obtain immunity from civil liability. Writing a new rule is an admission by a party opponent that they didn't believe they had immunity in the first place! The new Kentucky Supreme Court rule 3.160(4) which reads as follows:

"Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial." The new rule appears to be unconstitutional because it provides for no due process.

If the Appellant was the first man they ever blackballed, why would they go to all the

time, trouble and expense of writing a new Kentucky Supreme Court rule?

Please consider these additional facts. Tommy Bell, the Chairman of the Character & Fitness Committee, told the Appellant after the Appellant found the letter in his file some three years after the letter was written, "we always intended to take your money for the Bar Exam, but we never intended to pass you!" Why would Mr. Bell make such a statement. He was arrogant and he thought he was untouchable! He gave the University of Kentucky $100,000 for 12 years as a gift. He thought I was a "little man" trying to be admitted to the Bar.

Consider these additional facts. Bar examiner, Stuart Lampe, told the Appellant, after the Appellant requested to see his exam paper "what is your exam number", the Appellant told him, then the bar examiner voluntarily said, "You passed my section," and indicated he had the Appellant's paper in one stack with all the other passing papers, and his non-passing

papers in a different location. When the Appellant asked why he only received 73 when 75 was passing since he had passed Lampe's section there was absolute dead silence; the bar examiner knew the Appellant's name, but he did not know his face when he came into the Bar Examiner's office unannounced. It was an old bar exam question the Appellant had in bar review course and he knew the answer like he knew the back of his hand.

Please consider this additional fact. There was an article that appeared in the Louisville Courier Journal in 1984 whereby the people that administer the Kentucky Bar Exam actually came out and admitted that if you have a sponsor or mentor when you take the Kentucky Bar Exam, you have a much greater chance of being passed; they also said you must pass the CFC before you can be admitted to the bar. This admission is discriminatory on its face! This would enable the CFC to maintain a private club if they wanted. Like any agency, the CFC

should be submitted to some kind of checks and balances system.

Over 30 states have now abolished Character & Fitness Committees because they serve no useful purpose. Presently, it does allow the one man during a five-minute interview to look at an applicant, and if he doesn't fit the physical image he wants a letter is placed in an applicant's folder preventing him from ever being passed. The five-minute interview was the first time Beaver had ever met the Appellant! Not only is it wrong, it is inherently wrong to place a letter in Appellant's folder and not provide him with any due process! In this country every man is supposed to have a fair and equal opportunity of passing a professional exam.

The Appellant has no criminal record; but he can show you 12 convicted felons practicing law in Kentucky, four of them are in Louisville. Even X "Chief Justice" of the Kentucky Supreme Court, John Palmore, son is a convicted felon for armed robbery; he robbed a grocery store, and he now has a license to practice law in Kentucky!

NEW ARGUMENT

I do not like to say this, but the Kentucky Supreme Court is CORRUPT when it comes to admitting new members to the Kentucky Bar. The reason petitioner makes this statement is because

1) The Kentucky Supreme Court is responsible for writing new Kentucky Supreme Court rules of court. They wrote supreme court rule 3.160 (4) after they were sued by the petitioner in their attempt to cover their ass and make it look like they had immunity from civil liability! They did not know if the federal court would protect them or how many other bar applicants would say the say thing happened to them that happened to your petitioner.

2) In addition the Ky. Supreme Court has written a NEW BAR APPLICATION after they were sued by the petitioner. The new bar exam appears to be UNCONSTITIONAL ON ITS FACEbecause it does not provide for any DUE PROCESS , meaning "FUNDMENTAL FAIRNESS." The application informs prospective bar members that they CANNOT sue the character and fitness committee. Isn't case law crystal clear

that absolutely no one can contract away their civil liability? That is exactly what the boys that administer the Kentucky Bar EXam are attempting to do!If the prospective bar member does not sign the waiver not to sue the character and fitness committee, they will blackball the applicant if they desire to do so. On the otherhand, if the applicant signs the waiver not to sue the character & fitness committee, the CFC will tell the bar applicant, sorry there is nothing you can do; see exhibit # 5. For the reasons given we are asking the US Supreme court to declare the new 1989-90 Kentucky Bar application unconstitional!

A CORRUPT organization or COURT WILL NEVER POLICE ITSELF! Therefore, your petitioner is asking the US SUPREME COURT to intervene and declare the new Kentucky Bar Application unconstitional.
SEE PULLMAN V SWINT 456 US 273 (1982)

HASKINS V DEPARTMENT OF ARMY 808 F.2d 1192

6th Circuit (1987)

By a 8-0 vote the US Supreme court instructed the US 6 th circuit to follow a case called FORRESTER V WHITE 484 US ___, 1988, 98 L. ED 555, and apply it to the Sparks case. Your docket # 87-275. The US Supreme Court should RECONSIDER the holding of the US 6 th circuit because they not only failed to do what they were instructed and mandated to do, their decision, (the 6 th circuit) decision was "CLEARLY ERRONEOUS", and INCORRECT LEGAL PRINCIPALS WERE APPLIED, the decision will be REVERSED AND VACATED. See PULLMAN V SWINT 456 US 273 (1982), and HASKINS V DEPARTMENT OF THE ARMY 808 F. 2 1192. (6 th Circuit) 1987.

In addition, the 6 th circuit decision defies logic, and reason and there is no legal justification for what they did, and their decision should "shock the conscience" of every judge sitting on the US Supreme Court! Make no mistake about it, the US 6 th circuit knew that if the US Supreme Court heard this case once, they would never hear it again! The US 6th circuit knows as does the petitioner, that the US Supreme

hears less than 3% of the cases. that hit their docket. Once the 6 th circuit did their thing, acted with total and deliberate indifference to what the US Supreme court told them to do, the 6 th circuit knew the highest court would never hear this case again! What a shame and a disgrace to allow a lower court to CIRCUMVENT the highest court in this country, the US SUPREME COURT!

We believe that both the US 6th circuit and the Kentucky Supreme Court have acted with "DELIBERATE INDIFFERENCE " to the law and the facts in this case and their holding and order should be set aside.See DESHANEY V WINNEBAGO COUNTY AND CANTON V HARRIS 489 US ___, 103 L.ED 2d 412,; LEACH V SHELBY COUNTY SHERIFF , 6 th Circuit 12-20-89, 19 Sixth Circuit Review 5 Page 2.

In addition the 6 th Circuit holding makes for very bad case law, and would allow the Kentucky SUPREME COURT AND THE PEOPLE WHO ADMINISTER THE KENTUCKY BAR EXAM, TO MAINTAIN A "PRIVATE CLUB," THRU THE USE OF A UNCONSTITIONAL BAR APPLICATION.

The legal doctrine of RES JUDICATA SHOULD NOT BAR THE US SUPREME COURT FROM REHEARING THIS CASE. This case is not Res Judicata because the parties are not the same. When the US 6 th circuit wrote their opinion after being instructed and mandated to follow FORRESTER V WHITE, 484 US ___, (1988) they wrote about Judge Stephens of the Kentucky Supreme Court who was not a defendant in this case.He was non suited way back in 1985. See exhibit # 6. The US 6 th circuit wrote their opinion in October of 1988, and AFTER Stephens was non suited in 1985! This act of negligence or "INTENTIONAL INDIFFERENCE" on the part of the US 6 th Circuit indicates to the petitioner and to others that the 6 th circuit either did not read their own file, or they were paid off not to do anything about this case. Judge Mike McDonald, of the Kentucky Court of Appeals told your petitioner when asked, "How come the US 6th circuit didn't do what the US SUPREME COURT TOLD THEM TO DO?" Petitioner was informed that the 6 th circuit was paid off not to do anything about this case as it

OPENS UP "PANDORAS BOX" AS TC THE CREDIBILITY OF PROFESSIONAL EXAMS. I'm not trying to be overly critical of the US 6th circuit; experts say it is the most highly criticized court (federal) in the Country! There have been actual cases where it has been proven that federal judges have taken kickbacks or bribes to influence their decision. The lastest cases that I can recall are federal Judge Claiborne and the corrupt federal judge in Louisana.How would you like to be the Judges sitting on the Kentucky Supreme Court; if you allow me to win, the State of Kentucky will become the first state where it has actually been proven that every man does not have a fiar and equal opportunity of being passed on a professional exam. At this time there is known corruption existing on the California and Ohio bar exam. If you know anything about politics in Kentucky, you will also know that Kentucky is probably the most corrupt state in this country.

Even though I'm only one man, I was fortunate to catch the "GOOD OLD BOYS" in their big time

CORRUPTION: SOMETHING SHOULD BE DONE ABOUT THEIR EXTREME AND OUTRAGEOUS CONDUCT! I will tell you that I do not believe the US SUPREME COURT CAN BE BOUGHT, even though this case makes the system that administers the Kentucky bar exam look corrupt. After voting for this petitioner by a 8-0 vote, your docket # 87-275, I do not believe you will sit back and allow the US 6th circuit and the Kentucky Supreme Court to make a MOCKERY out of our judicial system in regards to the corruption that exists on the administration of the KENTUCKY BAR EXAM.

I have worked very hard for my education and I do not want to be denied my right to pursue my profession and practice law just because one man placed a letter in my folder that prevented me from being passed on the Kentucky bar exam. This court battle has been going on since 1983. The ex lawyer who destroyed the lively hood of my choice is now a waterbed salesman! He dropped the letter in my folder in 1980 and I found the letter in 1983.

When the U.S 6 th circuit wrote their opinion we do not believe they acted in "GOOD FAITH." Nor did they act in a OBJECTIVE REASONABLE MANNER, AND THEREFORE SHOULD BE HELD ACCOUNTABLE FOR THEIR ACTIONS. See HARLON V FITZGERALD 457 US 800 (1982) When Beaver Jr. placed the letter in petitioner's folder preventing him from being passed on the Kentucky Bar Exam, his actions constituted a LACK OF GOOD FAITH NOR DID HE ACT IN A REASONABLE MANNER AND THEREFORE HE SHOULD BE HELD ACCOUNTABLE FOR HIS ACTIONS. See Harlon v FITZGERALD 457 US 800 (1982), and HASKINS V DEPT OF ARMY 808 D. 2d 1192. 6 th circuit 1987.

Unless the US Supreme Court takes some action in this case petitioner will lose his fight to be admitted to the Kentucky Bar. I'm not a weird person, but consider myself to be a reasonable man who believes with GOD on my side, he allowed me to find the letter in my file, something I was never suppose to find, and the US SUPREME COURT ON MY SIDE, 8-0 vote, your docket # 87-275, I believe I should be allowed to win this case!

The reason the Kentucky Supreme court decision in June of 1990 not to waive petitioner into the Kentucky Bar should not stand is because petitioner's equal rights and DUE PROCESS RIGHTS HAVE BEEN VIOLATED BY THE PEOPLE WHO ADMINISTER THE KENTUCKY BAR EXAM. See WILNER V CHARACTER & FITNESS COMMITTEE 373 US 96, and LEWIS V SUPREME COURT OF NEVADA 490 F. Supp 1174; furthermore, they are still trying to blackball applicants on the Kentucky Bar Exam as evidenced by the new bar application. See exhibit # 5. Your petitioner never had a chance of being passed on the Kentucky Bar Exam; he was not afforded the same opportunity as other applicants because of the letter placed in his file and before he took any exam!Petitioner's EQUAL RIGHTS (EQUAL PROTECTION RIGHTS) under the 14 th amendment were violated. STATE ACTION IS INVOLVED BECAUSE THE PETITIONER HAD TO PAY $100.00 each time he took the exam, and the Kentucky Supreme Court has the ultimate responsibility of policing the administration of the Kentucky Bar exam. Petitioner is not a convicted felon, even though we have convicted

felons practicing law in Kentucky. For these reasons, petitioner should be admitted to the Kentucky Bar.

Today six states do not require a bar exam if you graduate from an accredited law school in that state. Those states are West Virginia, Wisconsin, New Hampshire, South Dakota, Idaho, and one other state.

Naturally after the petitioner has exposed the corruption that is existing on the administration of the Kentucky Bar Exam, and after the Kentucky Supreme Court has spent over $130,000 to defend this case, petitioner was not waived into the Kentucky Bar. It is obvious that the Kentucky Supreme Court still intend to blackball whomever they want. It is obvious because of the new Kentucky Bar application. See exhibit # 5. When a man is capable of taking his own case to the US Supreme Court, the highest court in this country, he certainly should be qualified to practice law in Kentucky. We sincerely believe that the facts indicate that the petitioner should

BE WAIVED INTO THE KENTUCKY BAR AND AWARDED HIS DAMAGES UNDER FEDERAL RULE 11 or given a trial to determine his damages for having his 5 th, 6 th, 8 th, and 14 th amendment rights violated.

The Kentucky Supreme Court and the US 6th circuit have acted with "DELIBERATE INDIFFERENCE" to the law and to the FACTS IN THIS CASE AND TO THE INSTRUCTIONS AND MANDATE GIVEN TO THEM BY THE US SUPREME COURT, AND THEREFORE THEIR HOLDING SHOULD BE SET ASIDE. SEE DE SHANEY V WINNEBAGO COUNTY AND CANTON V HARRIS 489 US ___, 103 L. ED 2d 412; LEACH V SHELBY COUNTY SHERIFF 6 th circuit, 12-20-89, 19 sixth circuit review 2 P 4 and PLEASANT V ZAMIESKI sixth circuit 2-8-89, 19 sixth circuit review 5, page 2.

Now For a brief discussion of immunity. It is the weakest defense of all! Judges don't have immunity from civil liability when they excerise an administrative function, Interviewing people, hiring and firing people are purely administrative functions.See FORRESTER V WHITE 484 US___, and

SPARKS V CHARACTER & FITNESS COMMITTEE 98 L. ED 2d 757 (1988). Even US Congressmen don't have immunity from civil liability; the only exception is when the Congressman is in Congress excerising the speech and debate clause; neither the AMERICAN MEDICAL ASSOCIATION, OR THE AMERICAN BAR ASSOCIATION HAVE ANY IMMUNITY FROM CIVIL LIABILITY. Neither lawyers or their secretaries have any immunity from civil liability. Even President's aids do not have immunity from civil liability. Therefore, a mere lawyer who interviews a prospective bar member before he takes his bar exam , then drops a letter in his file preventing the applicant from being passed on his exam , and without any DUE PROCESS BEING AFFORDED TO THE APPLICANT, SHOULD NOT HAVE ANY IMMUNITY FROM CIVIL LIABILITY. SPARKS V CHARACTER & FITNESS COMMITTEE See 98 L. ED 757 (1988)

EVEN THE Kentucky Supreme Court does not believe the Character & Fitness Committee has any immunity from civil liability!! Why, because they wrote a new Kentucky Supreme Court rule AFTER they were sued by the petitioner. That act should be deemed

AN ADMISSION BY CONDUCT WHICH IS AN EXCEPTION TO THE HEARSAY RULE, AND THEREFORE, ADMISSIBLE AS AN EXCEPTION TO THE HEARSAY RULE. See Old rule 2.060, and see new rule 3.160 (4). These rules appear as exhibits, exhibit # 3.

Chief Judge Stephens of the Kentucky Supreme Court does not believe any immunity from civil liability exists. See CITY OF LONDON V GAS SERVICES 687 SW 2 144.

In Kentucky the soverign immunity defense has been abolished. See HAYES V UNIVERSITY OF KENTUCKY 88 KY. S Ct 283 (1989)

Your petitioner had a clearly established CONSTITIONAL RIGHT TO NOTICE OF A HEARING AND WAS ENTITLED TO A DUE PROCESS HEARING IN 1980, the time of the 5 minute interview and the time the letter was placed in petitioner's folder preventing him from being passed on the KENTUCKY BAR EXAM. See WILNER V CHARACTER & FITNESS COMMITTEE 373 US 96. This petitioner was never afforded these CLEARLY ESTABLISHED CONSTITIONAL RIGHTS. Petitioner never received notice of a hearing nor

WAS ANY DUE PROCESS HEARING EVER AFFORDED TO THE PETITIONER, AS TO WHY HE WAS REJECTED BY THE ONE MAN CHARACTER AND FITNESS COMMITTEE. Therefore, no immunity qualified or otherwisecan attach to the actions of Beaver Jr., the man that interviewed the petitioner, nor can any immunity qualified or otherwise attach to Tommy Bell, the chairman of the character & fitness committee.

To quote the Wilner case,373 US 96, "PETITIONER WAS ENTITLED TO NOTICE OF A HEARING ON THE GROUNDS FOR HIS REJECTION EITHER BEFORE THE COMMITTEE OR BEFORE THE APPELLATE DIVISION. THE REQUIREMENT OF PROCEDURAL DUE PROCESS MUST BE MET BEFORE A STATE CAN EXCLUDE A PERSON FROM PRACTICING LAW. PROCEDURAL DUE PROCESS REQUIRES CONFRONTATION AND CROSS EXAMINATION OF THOSE WHOSE WORD DEPRIVES A PERSON OF HIS LIVELYHOOD." YOUR PETITIONER HAD NEVER BEEN AFFORDED AN OPPORTUNITY TO CONFRONT HIS ACCUSER (BEAVER JR, THE INTERVIEWER) OR TO CROSS EXAMINE HIM.

The UNITED STATES SUPREME COURT SHOULD HEAR THIS CASE AGAIN BECAUSE UNDER SUPREME COURT RULE 17 (c) when a state court or a federal court of

appeals has decided an important question of FEDERAL LAW, IN A WAY TO CONFLICT with applicable decisions of the US SUPREME COURT. The US Supreme COURT CAN DECIDE TO HEAR THE ISSUE AGAIN. This is exactly what we have hear; the US 6th circuit was instructed and mandated to apply the FORRESTER V WHITE CASE TO THE SPARKS CASE, AND FROM READING THE HOLDING OF THE US 6 th CIRCUIT IT IS APPARANT THEY DID NOT FOLLOW THE INSTRUCTIONS AND MANDATE SET FORTH BY THE US SUPREME COURT. SUPREME COURT DOCKET # 87-275. The KENTUCKY SUPREME COURT HAS DENIED THE PETITIONER ADMISSION TO THE KENTUCKY BAR WITHOUT PROVIDING HIM WITH ANY PROCEDURAL DUE PROCESS. A state must provide a bar applicant with procedural DUE PROCESS. See-WILNER V CHARACTER & FITNESS COMMITTEE 373 US 96. (1963)

Therefore, BECAUSE OF THE SPECIAL AND IMPORTANT REASONS SPECIFIED IN THIS WRIT, SHOULD JUSTIFY THE US SUPREME COURT JUDICIAL DISCRETION TO REVIEW THIS VERY IMPORTANT AND SERIOUS MATTER.

O

LAW AND ARGUMENT

Supreme Court Case Law, the Willner v. Character & Fitness Case at 373 U.S. 96 (1963) and the Louis v. Supreme Court of Nevada 490 F. Supp. 1174, are crystal clear; they hold that a prospective bar applicant must have A) notice of a hearing, B) a due process hearing so he can be confronted and explain away anything that the CFC thinks they have against the man. NO NOTICE, NO DUE PROCESS HEARING WAS EVER GRANTED IN THE APPELLANT'S CASE. Beaver arbitrarily and capriciously placed a letter on the Appellant's folder preventing him FROM EVER being passed on the Kentucky Bar Exam.

When an applicant's money is taken for a professional exam, he must be given a fair and equal opportunity of being passed! To allow the CFC immunity from civil liability would put them above the law and prevent them from being subject to any type of checks and balance system. Certainly they have no immunity when they violate a bar applicant's basic and

fundamental civil rights! To grant civil immunity to a man who merely exercises an administrative function by interviewing prospective bar members would circumvent the law and allow the CFC to practice discrimination legally. Even Chief Justice Robert Stephens of the Kentucky Supreme Court believes the CFC should not have immunity. See City of London vs. Gas Services Co., 687 S.W. 2 144. If anyone violates civil rights, they should be made to pay for violating those rights.

No man is this country is supposed to be above the law. The one man CFC has no power to hear cases, render written opinions, conduct trials, set bail, set bond, or impose sentencing. He only interviews prospective bar members and, therefore, he has no judicial immunity. Interviewing prospective bar members is purely an administrative function.

A professional exam is supposed to be based upon merit and not on who you know or

whether or not a letter has been placed in your file.

What gives one man the right, power and authority to place a letter in a man's folder without his basic and fundamental due process rights being granted? Beaver, Jr. clearly abused his discretion when he placed a letter in applicant's folder, blackballing the Appellant. This case should set a very big precedent in this country!

The Appellant asks that this not become a political decision as he has worked very hard for his education. A man's mind is a horrible commodity to waste! This case does in fact show that corruption exists within the administration of the Kentucky Bar Exam. Beaver has denied Appellant access to his chosen profession. How many other people have been treated in this manner and in how many other professions does this extreme and outrageous conduct exists?

Please allow this case to set a precedent

for those people that administer professional exams. They should be fair to all people, or be prepared to pay a price for violating an individual's basic and fundamental constitutional rights!

SEE FORRESTER V WHITE 484 US_____, where a Judge has no immunity from civil liability when he fires a black female probation officer and she sues the Judge based upon sex discrimination and the Judge claims he is immune from civil liability. The Court held that the JUDGE HAS NO IMMUNITY from civil liability.If a Judge who is excerising purely an administrative function has no immunity from civil liability how can a mere lawyer have immunity from civil liability?

Beaver Jr., the man that placed the letter in Sparks's folder or file, before he took any exam, how can this man have immunity from civil liability when he is excerising purely an administrative function when he interviews prospective Bar Applicants?If a Judge doesn't have immunity from civil liability when he excerises purely an administrative function, how can a mere Lawyer have immunity from civil liability?

CONCLUSION

For the reasons set out herein, this honorable court should and ought to issue its writ of certiorari to review the ORDER OF THE KENTUCKY SUPREME COURT and judgment and opinion of the 6 th circuit concerned herin.

RESPECTFULLY SUBMITTED,

Gerald M. Sparks

113 West Southern Heights

Louisville, Ky. 40214

502 368 1435

502 582 1347

VERIFICATION

I, Gerald M. Sparks, hoping to be a member of the Bar of Kentucky and the person of record for Appellant in the above entitled matter.

I have read the foregoing petition and know the contents thereof.

I declare under penalty of perjury under the laws of Kentucky that the foregoing is true and correct. Executed on 7-22-90 at Louisville, Kentucky.

Gerald M. Sparks

GERALD M. SPARKS

APPENDIX

A. SPARKS V CHARACTER & FITNESS COMMITTEE
6 th Circuit Opinion (2 opinions)
Judgment of Federal 6 th Circuit

B. Petition for rehearing denied

C. WRIT OF CERTIORARI GRANTED BY US SUPREME COURT: 6 th CIRCUIT INSTRUCTED AND MANDATED TO FOLLOW FORRESTER V WHITE 484 US ____. Petitioner to receive $200. for his costs expanded.

E. MOTION TO KY BAR - denied

F- MOTION FOR RECONSIDERATION TO KY BAR-denied

I certify that all the appendices attached to the petition for Certiorari filed herein are copies of what they purport to be.

Gerald M. Sparks

Gerald M. Sparks

STATEMENT OF MAILING

I, GERALD M. SPARKS, hereby certify that, on the first day of Aug., 1990, I served 3 copies of the foregoing petition by personally placing same in a sealed envelope first class postage thereon fulled prepaid in United States Post Office Mail box in Louisville, Kentucky, to each of the parties thereto, as follows:

1. To the United States Supreme Court, office of the Clerk, Washington, D.C. 20543, enclosing established filing fee; and

2. On appellees, through their counsel of record, John Valentine, 1200 One Riverfront Plaza, Louisville, Kentucky 40202 (3 copies given).

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

Gerald M. Sparks

GERALD M. SPARKS

COUNTY OF JEFFERSON

STATE OF KENTUCKY

On 7-22-90, before me the under signed, a Notary Public in and for said state, personally appeared Gerald M. Sparks, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Patricia C. Gatchell

Notary Public for said County and State

-This opinion makes no sense.
-They talk about Judge Stephens of the KY Supreme Court and he was not a Δ in this case. He was not sued in 1985. See Exhibit #6
-Interviewing a prospective for member by a lawyer before the exam has to be an administrative function and no immunity can attach.
-Petitioner was not afforded any procedural Due Process. Wilner v CFC - 373US96 (1963)

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS,
Plaintiff-Appellant,

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al.,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Western District of Kentucky.

Decided and Filed October 18, 1988

Before: ENGEL, Chief Judge;* KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. This case has been returned to us by the United States Supreme Court which vacated our earlier judgment and directed that we give the matter "further consideration" in light of *Forrester v. White,* 484 U.S. _; 98 L. Ed. 2d 757 (1988). We have done so and now hold that the Supreme Court's opinion in *Forrester* is entirely distinguishable from this case and, therefore, does not require that

*The Honorable Albert J. Engel assumed the duties of Chief Judge effective April 1, 1988.

we change our previous decision. *See Sparks v. Character & Fitness Comm.*, 818 F.2d 541 (6th Cir. 1987). Accordingly, we once again affirm the district court's dismissal of plaintiff's complaint.

I.

Plaintiff Sparks filed a complaint in the district court on March 1, 1985 against the chief justice of the Kentucky Supreme Court, a member of the Board of Law Examiners, the Kentucky Character and Fitness Committee, its members, and two of its employees. The complaint alleged violations of various constitutional rights pursuant to 42 U.S.C. § 1983, and asserted several state law claims arising out of the Kentucky Supreme Court's refusal to admit Sparks to membership in the bar of the state of Kentucky.

In our earlier decision, we described the factual background for Sparks' lawsuit as follows:

> Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the [Kentucky Character and Fitness] Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.
>
> Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times . . . knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

818 F.2d at 542.

The district court dismissed the action against the Honorable Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, on the ground that Chief Justice Stephens was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. The district court also dismissed the action against the remaining defendants, holding that given the extensive authority exercised over the Board of Bar Examiners and the Character and Fitness Committee by the Kentucky Supreme Court, the actions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and are also "clothed with judicial immunity." The district court therefore dismissed plaintiff's complaint.

On appeal, we affirmed the district court's holding. 818 F.2d 541 (6th Cir. 1987). After noting, *inter alia*, that the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar," Ky. Const. of 1891, § 116 (1976), we held that "the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity." 818 F.2d at 543. Our reasoning, in part, was as follows:

> In [*Stump v.*] *Sparkman* [435 U.S. 333, 342 (1978)], the Supreme Court stated:
>
> > "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties,

> i.e., whether they dealt with the judge in his judicial capacity."
>
> . . . .
>
> The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:
>
> > "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."
>
> *Ex parte Secombe*, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons v. Bellinger*, 643 F.2d 774, 780 (D.C. Cir. 1980). *Accord Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174, 1182 (D. Nev. 1980); *Galahad v. Weinshienk*, 555 F. Supp. 1201, 1204 (D. Colo. 1983).
>
> . . . .
>
> The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

818 F.2d at 542-43. We therefore affirmed the district court's dismissal of the plaintiff's complaint against the chief justice of the Kentucky Supreme Court. *Id.* at 543.

We then addressed the question whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities with regard to plaintiff's application for admission to the Kentucky bar. We explained in some detail that since the "nonjudicial" defendants were acting pursuant to a command imposed upon them by the Kentucky Supreme Court under a provision of the Kentucky Constitution, their actions, at the very least, were quasi-judicial and, that being so, they were entitled to absolute immunity as well. We stated, in part:

> Public policy requires "absolute immunity . . . for all persons—governmental or otherwise—who [are] integral parts of the judicial process." *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)). In *Campbell* [*v. Patterson*, 724 F.2d 41, 43 (6th Cir. 1983)], we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.
>
> A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F.2d at 780; to a state bar association conducting disciplinary proceedings, *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills v. Killebrew*, 765 F.2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman v. Leedy*, 479 F.2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson v. Granholm*, 662 F.2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, *Imbler v. Pachtman*, 424 U.S. 409 (1976).

. . . .

In *Hoover* [*v. Ronwin*, 466 U.S. 558 (1984)], the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." 466 *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker v. Brown*, 317 U.S. 341 (1943). *Hoover*, 466 U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F.2d at 781.

. . . .

> The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to the admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent."

Id. at 543-44. We concluded that:

> The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform those duties on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

Id. at 544-45. We determined, in other words, that whether a function is a judicial act is determined by the nature of the function, not the office of the actor.

In obedience to the Supreme Court's order, we now reconsider our decision in light of *Forrester*.

II.

In *Forrester*, plaintiff brought a 42 U.S.C. § 1983 action against a state court judge, alleging that she was demoted and later discharged from her position as a probation officer because of her sex, in violation of the Equal Protection Clause of the fourteenth amendment. Under Illinois law, the defendant judge had authority to hire and fire such officers at his discretion. The Supreme Court held that the judge was not protected from liability by absolute judicial immunity because it was "clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester." 98 L. Ed. 2d at 566. In reaching this holding, the Court observed:

> When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches.
>
> This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive

> functions that judges may on occasion be assigned by law to perform. Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character. *See Stump v. Sparkman,* 435 U.S. 349, 363 n.12 (1978). Similarly, acting to disbar an attorney as a sanction for contempt of court, by invoking a power "possessed by all courts which have authority to admit attorneys to practice," does not become less judicial by virtue of an allegation of malice or corruption of motive.

Id. at 565 (*quoting Bradley v. Fisher,* 80 U.S. (13 Wall.) 335, 354 (1871)) (emphasis in original).

Thus, the Court in *Forrester* made clear that only "judicial acts" are protected by judicial immunity, and that administrative decisions, although "often crucial to the efficient operation of public institutions," such as the courts, are not protected by absolute immunity. 98 L. Ed. 2d at 566. Judicial immunity has not been granted to judges promulgating a code of conduct for attorneys. *Supreme Court of Virginia v. Consumers Union of United States, Inc.,* 446 U.S. 719 (1980). Similarly, "judges acting to enforce the bar code would be treated like prosecutors, and then would be amenable to suit for injunctive and declaratory relief." *Id.* at 734-37.

In *Forrester,* Justice O'Connor explained that the analytical key "in attempting to draw the line" between functions for which judicial immunity attaches and those for which it does not is the determination whether the questioned activities are "truly judicial acts" or "acts that simply happen to have been done by judges." It is the *nature* of the function involved that determines whether an act is "truly" judicial.

The question then is whether an "administrative" decision to hire or fire a court staff employee, action not essentially "judicial," as in *Forrester,* is the functional equivalent of the

action of the justices of a state supreme court and their designees in considering the qualifications of an applicant for admission to the bar as in this case.

A careful examination of the *Forrester* and *Consumers Union* cases reveals that the nature of the function involved in determining qualifications for admission to the bar on the one hand, and hiring and firing court staff personnel or enforcing a bar code on the other, are essentially different. The former is a judicial act, the latter two are not.

As *Forrester* holds, hiring and firing administrative court staff personnel are functions that merely happen to be performed by some judges. Indeed, they are functions ordinarily performed by nonjudicial employers and, when judges perform them, the actor is different but the nature of the action is not. In many courts, the employment decisions for court staffing purposes are made by nonjudicial court personnel. There is, as the Court held in *Forrester*, nothing functionally or historically "judicial" about hiring or firing staff members. The same cannot be said for the historically judicial function of determining eligibility for, and the composition of, the state bar.

The language of *Forrester* itself, to say nothing of the very different facts involved there, suggests at least three separate reasons why the actions taken in this case by the Kentucky Supreme Court and its Committee on Character and Fitness are "judicial acts." First, in *Forrester*, the Supreme Court cited the availability of an appeal process as a central reason for granting judicial immunity to judges for their judicial acts: "Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effect inevitably associated with exposing judges to personal liability." *Forrester*, 98 L. Ed. 2d at 565. Kentucky Supreme Court Rule

2.060 provides applicants to the Kentucky bar with an avenue of appeal on the record from adverse decisions by the Committee on Character and Fitness:

> The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the bar of this state shall be final unless, on motion by the applicant filed within sixty days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon *review of the record* overrules such decision.

(emphasis added).

Supreme Court review on the record of an adverse decision "as to the eligibility of the applicant for admission to the bar," initiated "on motion," describes a process of appellate review of possible "judicial mistakes or wrongs" that has no counterpart in the review of the inherently administrative function of hiring and firing court staff personnel.

Second, the *Forrester* Court quoted, with approval, from the decision in *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1871), according immunity to the judicial disbarment of an attorney. The *Bradley* Court observed that acting to disbar an attorney invokes a power "possessed by all courts which have authority to admit attorneys to practice. . . ." 80 U.S. (13 Wall.) at 354. If the action of a court in disbarring an attorney is a judicial act for which immunity attaches, in part, because it "invokes a power possessed by all courts which have authority to admit attorneys to practice," it follows inexorably that in exercising the power it has to determine who shall be admitted to practice, the Kentucky Supreme Court performs a judicial act for which immunity attaches. And if, as the *Forrester* Court observed, it is the nature of the function performed which determines the judicial character of an act and not "the character of the agent," it is of no moment that the actor is a designee of the justices of the Kentucky Supreme Court rather than the justices themselves. "Here,

as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." 98 L. Ed. 2d at 565 (emphasis in original).

Finally, the power to determine eligibility for membership in the bar has historically been reposed exclusively in the courts. *See Ex parte Secombe, supra*; *Simons v. Bellinger, supra.* That is not to say that "because a judge acts within the scope of his authority, such . . . decisions are brought within the court's 'jurisdiction' or converted into 'judicial acts'. . . ." *Forrester,* 9 L. Ed. 2d at 567. Some functions performed by courts are so inherently related to the essential functioning of the courts as to be traditionally regarded as judicial acts. Determining the composition of the bar is just such an historic and traditional function. The establishment of criteria for determining the intellectual competence, academic preparedness, and moral fitness of persons who petition the court for the privilege of undertaking the confidential trust of serving the court as one of its professional officers has always been a function confined to the courts themselves. It has been universally thought that the courts are best equipped to understand the requirements for adequate representation of lay persons before the courts and to identify the qualifications of those who would undertake such representation as the courts' officers. That inherent expertise, and the exercise of the power to apply it in admitting and rejecting candidates to the practice of law, functions rooted in tradition and history, are arguably as fundamental to the sound functioning of the judiciary as is the task of resolving the disputes such officers present.

We return, then, to the analytical key provided by Justice O'Connor in *Forrester* for "drawing the line" between functions for which judicial immunity attaches and those for which it does not: whether the function in question is a "truly judicial act[ ]" or an "act[ ] that simply happen[s] to have been done by judges." Whatever argument might be made about the inherently "judicial" character of the function of

determining the membership of the bar, it is manifest that whether analyzed from the perspective of judicial precedent, judicial expertise, history and tradition, or the nature of the act itself, determining the composition of the bar is clearly not a function, like hiring and firing administrative, clerical, and other court personnel that is or ever has been performed by anyone in the private sector or in other branches of government, and "simply happen[s] to have been done by judges."

III.

For the foregoing reasons, and those set forth in *Sparks, supra,* we hold that the actions taken by the Kentucky Supreme Court and the Committee on Character and Fitness, and its members, were "judicial acts" to which absolute immunity attached. Having carefully reconsidered our previous decision to that effect in light of the Supreme Court's decision in *Forrester,* we conclude that the district court's dismissal of Sparks' complaint must be **AFFIRMED**.

APPENDIX A

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS,
Plaintiff-Appellant,

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY; JUNIUS BEAVER, JR.; TOMMY BELL; GRANT HELMAN; BILL BAIRD III; JUDGE STUART LAMPE; ROSEMARY PUCKETT; PAT GILL,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Western District of Kentucky.

Decided and Filed May 11, 1987

Before: ENGEL, KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. Gerald Sparks appeals *pro se* the district court's dismissal of his complaint against the Kentucky Committee on Character and Fitness, its members, two employees hired by the Committee, one member of the Board of Bar Examiners, and the Chief Justice of the Kentucky Supreme Court. The district court held that the defendants were entitled to absolute judicial, or quasi-judicial, immunity

from liability in appellant's 42 U.S.C. § 1983 suit requesting monetary damages. We affirm.

I

On March 1, 1985, Sparks filed a complaint in district court alleging § 1983 violations of his procedural and substantive due process rights, his equal protection rights, and his rights under the eighth amendment of the United States Constitution. He also alleged breach of contract, fraud and deceit.

Specifically, Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky Bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.

Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times ... knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

On April 17, 1985, the district court dismissed the action against defendant Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, holding that the Chief Justice was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. On June 25, 1985, the court dismissed the action against the remaining defendants, finding:

> "The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and Fitness Committee. Their members

> are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060."

The court concluded that the functions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and these activities are also "clothed with judicial immunity." The court ordered Sparks' complaint dismissed.

II

It is well-established that judges of courts of general jurisdiction are immune from liability for their judicial acts. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1871). Except for acts in the "clear absence" of jurisdiction, judicial immunity is absolute. *Stump v. Sparkman*, 435 U.S. 349 (1978); *King v. Love*, 766 F.2d 962 (6th Cir.), *cert. denied*, _ U.S. _, 106 S. Ct. 351, 88 L. Ed. 2d 320 (1985).

While the defense of judicial immunity is very broad, it does not protect a judge in the performance of non-judicial acts. *Lynch v. Johnson*, 420 F.2d 818, 820 (6th Cir. 1970). In *Sparkman*, the Supreme Court stated:

> "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."

435 U.S. at 362. In the present case, the district court determined that the act of evaluating an application for admission to the state bar is judicial in nature.

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons v. Bellinger*, 643 F.2d 774, 780 (D.C. Cir. 1980). *Accord Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174, 1182 (D. Nev. 1980); *Galahad v. Weinshienk*, 555 F. Supp. 1201, 1204 (D. Colo. 1983). Moreover, in this case, the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar." Ky. Const. of 1891, § 116 (1976).

The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

The inherently judicial nature of the governance of the bar admission process is not diminished by the fact that an overburdened state supreme court delegates the administration of part of its responsibility to authorized persons. The Kentucky Supreme Court retains the ultimate authority to determine who will be admitted to practice law in the State of

Kentucky and who will not. Indeed, as his *pro se* brief indicates, Sparks was aware that the Kentucky Supreme Court had delegated its responsibilities in these matters to the Committee of Character and Fitness and the Board of Bar Examiners, and he does not question the validity of that delegation. Therefore, his expectations have clearly been satisfied. *Sparkman*, 435 U.S. at 362.

We hold that the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity. Therefore, the district court was correct in dismissing the plaintiff's complaint against the Chief Justice of the Kentucky Supreme Court.

III

The question that next arises is whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities in this matter. The "nonjudicial" defendants are the Kentucky Committee of Character and Fitness, its members, two employees hired by the Committee, and one member of the Board of Bar Examiners. Absolute judicial immunity "attaches to public officials who perform quasi-judicial duties." *Campbell v. Patterson*, 724 F.2d 41, 43 (6th Cir. 1983), *cert. denied*, 465 U.S. 1107 (1984). It is "a general principle of the highest importance to the proper administration of justice that a judicial officer . . . be free to act upon his own convictions, without apprehension of personal consequences to himself." *Sparkman*, 435 U.S. at 355. Public policy requires "absolute immunity . . . for all persons—governmental or otherwise—who [are] integral parts of the judicial process." *Briscoe v. Lahue*, 460 U.S. 325, 335 (1983). In *Campbell*, we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.

A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F.2d at 780; to a state bar association conducting disciplinary proceedings, *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills v. Killebrew*, 765 F.2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman v. Leedy*, 479 F.2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson v. Granholm*, 662 F.2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, *Imbler v. Pachtman*, 424 U.S. 409 (1976).

In the present case, the district court determined that the Committee and Board of Bar Examiners were performing quasi-judicial functions. In reaching this decision, the court relied on *Hoover v. Ronwin*, 466 U.S. 558 (1984). In *Hoover*, the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker v. Brown*, 317 U.S. 341 (1943). *Hoover*, 466 U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harrassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges. . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F.2d at 781. The court held that the members of the committee were entitled to absolute judicial immunity.

In this case, there can be no doubt that the functions of the Committee and Board of Bar Examiners are, at least, quasi-judicial. *Accord Childs v. Reynoldson*, 623 F. Supp. 135 (D.C. Iowa 1985). The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this case are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent.

The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is per-

formed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform this duty on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

The decision of the district court is AFFIRMED.

APPENDIX A

FILED

UNITED STATES COURT OF APPEALS

MAY 11, 1987

FOR THE 6th CIRCUIT

JOHN P. HELMAN, CLERK

NO. 85-5629

GERALD M. SPARKS, Plaintiff, appellant

V

THE CHARACTER & FITNESS COMMITTEE OF KENTUCKY, Defendants-appellees

BEFORE: ENGEL, KRUPANSKY, AND RYAN, CIRCUIT JUDGES

JUDGMENT

On appeal from the United States District Court for the Western District of Kentucky.

This cause came on to be heard on the record from thesaid district court and was argued by counsel.

On consideration wherof, it is now here ordered and adjudged by this court that the judgment of the said district court in this case be and the same is hereby affirmed.

Each party is to bear its own costs on appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

A true copy.

ATTEST:

Michelle D. Man
Deputy Clerk

ISSSUED AS MANDATE:
6-24-87

APPENDIX B

FILED JUNE 16, 1987

NO. 85-5629

JOHN P. HEHMAN, CLERK

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS, PLAINTIFF-APPELLANT

V

CHARACTER & FITNESS COMMITTEE OF KY.,DEFENDANTS,APPELLEE

BEFORE: ENGEL, KRUPANSKY AND RYAN, CIRCUIT JUDGES

ORDER

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman,

John P. Hehman, Clerk

SUPREME COURT OF UNITED STATES

DOCKET NO. 87-275

GERALD M. SPARKS, PETITIONER

V

CHARACTER & FITNESS COMMITTEE OF KY.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

THIS CAUSE HAVING BEEN SUBMITTED ON THE PETITION FOR WRIT OF CERTIORARI AND RESPONSE THERETO.

ON CONSIDERATION WHEREOF, IT IS ORDERED AND ADJUDGED BY THIS COURT THAT THE JUDGMENT OF THE ABOVE COURT IN THIS CASE IS VACATED WITH COSTS, AND THAT THIS CAUSE IS REMANDED TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FOR FURTHER CONSIDERATION IN LIGHT OF FORRESTER V WHITE 484 US _____, (1988).

IT IS FURTHER ORDERED THAT THE PETITIONER, GERALD M. SPARKS, RECOVER FROM CHARACTER & FITNESS COMMITTEE OF KENTUCKY, ET AL. TWO HUNDRED DOLLARS ($200.00) for his costs herein expended.

8-0 vote for petitioner

SUPREME COURT OF KENTUCKY

No. 90 SC 67-OA

IN RE: GERALD MARSHALL SPARKS MOVANT
JEFFERSON COUNTY

IN THE SUPREME COURT

ORDER

Gerald marshall Sparks' motions for oral argument and to be admitted to the Kentucky Bar Association are hereby denied.

Stephens, CJ, & Gant, Lambert, Leibson, Vance, and Wintersheimer, JJ, concur. Combs, J., not sitting.

ENTERED April 26, 1990

Robert Stephens

Chief Judge

SUPREME COURT OF KENTUCKY

90 SC 067-OA

IN RE: GERALD MARSHALL SPARKS

JEFFERSON COUNTY

IN THE SUPREME COURT

ORDER

The motion for reconsideration is denied.

Stephens, CJ, Gant, Lambert, Leibson, Vance and Wintersheimer, JJ., concur. Combs, J., not sitting

ENTERED: June 28, 1990

Robert Stephens

Chief Judge

EXHIBITS

1. **CFC letter regarding Appellant**
2. **Courier Journal article on sponsors /mentors**
3. **Kentucky Supreme Court Rules**
   2.060
   3.160(4)
4. **Courier Journal article on FBI**
5. New Kentucky Bar Exam application.
6. ORDER FROM US 6th circuit whereby Judge Stephens of the Ky. Supreme Court was dismissed from this law suit in 1985 and BEFORE the US 6th Circuit wrote their opinion.

SPECKMAN & BEAVER EXHIBIT 1

ATTORNEYS AT A LAW

600 S. Fourth Street

Louisville, Ky.

January 28, 1980

Ms. Rosmary Puckett, Executive Assistant
Ky State Board of Bar Examiners
716 Lexington Bldg.
201-205 West Short Street
Lexington, Ky. 40507

RE: JERRY MARSHALL SPARKS

Dear Ms. Puckett;

I am enclosing herewith the application of the above named individual.

The character & Fitness Committee may or may not be aware that I personally interview each applicant that I am sent to check.

In interviewing the above applicant the following informantion was supplied by him as a correction or change on his applicatinn.

1-He has been divorced, this took place in Maryland and there is still a piece of real estate to be settled in the divorce action.

2-He had been arrested twice in the State of Maryland He stated both were probated and were on warrants taken out by his wife while the divorce was in progress. He was arrested once for breaking and

entering into his own house, and once for assault.

3-Mr. Sparks stated he has taken the Maryland Bar Exam (6) times and has not passed it. He has taken the Pennsylvania Bar Exam two (2) times and did not pass it.

He listed a Larry Stevenson of 1301 Vermont Road, Belair Maryland, as an attorney reference, I attempted to call him but there is no listing for an attorney in Belair by this name.

One of Mr. Sparks character affidavits is signed and then notarized by the same individual, Judge Scott, a district court judge in Louisville, Kentucky.

In interviewing Mr. Sparks he stated he gave false answers on his application knowingly but did not so because he felt the Kentucky Bar would not let him take its exam if he gave truthful answer s .

Based upon the above problems I can not recommend Mr. Sparks for the taking of the February 1980 Kentucky State Bar Exam.

If you have any questions, please advise.

Very Truly Yours,

JUNIUS V. BEAVER, JR, ATTORNEY

JVB:mms
Enclosure

EXHIBIT 2

(6) From time to time, the Character and Fitness Committee shall recommend to the Supreme Court admission to the bar without examination of applicants for such admission who qualify therefor under the provisions of Rule 2.110.

[Amended effective January 1, 1978.]

OLD RULE

Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision.

[Amended effective January 1, 1978.]

Rule 2.070 Legal Education

(1) Before an applicant shall qualify for the bar examination he must have been graduated, with an LL.B. or equivalent professional degree, from a law school approved by the American Bar Association or by the Association of American Law Schools.

(2) At least fifteen days prior to the first day of his bar examination, the applicant shall file with the Clerk of the Supreme Court a certificate of his law school graduation. The certification shall be forwarded immediately by the Clerk of the Supreme Court to the Chairman of the Character and Fitness Committee or his designee.

(3) Notwithstanding the provisions of paragraph (1) of this section any person who is enrolled and in good standing in any such approved law school and who in the regular course of study will complete degree requirements within two months from the time such examination is given and has filed with the Board of Bar Examiners a statement of his intention to complete degree requirements at such school, may take the examination provided for under this article, but shall not be admitted to practice law in this state based on the results of the examination unless he completes the requirements for graduation as set out in paragraph (1) of this section within two months from the time of the examination. The grades of an applicant who takes an examination under this paragraph shall not be authenticated or released unless he completes the requirements for graduation within two months of the time of the examination. If an applicant takes an examination under the provisions of this paragraph and does not complete the requirements for graduation within two months of the time of the examination, the taking of such examination shall be deemed a failure within the meaning of Rule 2.090(3), regardless of what grade the applicant may have made on the examination.

[Amended effective January 1, 1978; November 1, 1981.]

COURT RULES

SUPREME COURT OF KENTUCKY

IN RE: ORDER AMENDING RULES OF THE SUPREME COURT (SCR)

86-1

January 13, 1986

The following amendments to SCR 2.111(6) and SCR 3.160(4) shall come effective upon the entry of this order. The following new rule, R 3.830, Kentucky IOLTA Fund, shall become effective on July 1, 86.

RULES OF THE SUPREME COURT (SCR)

1. SCR 2.111(6)

Paragraph (6) of SCR 2.111 shall read:

"(6) The limited certificate of admission to practice law in this mmonwealth shall expire if such attorney is granted a certificate of mission to practice, or is admitted to the Bar of this Commonwealth der any other Rule of this Court, or if such attorney ceases to be an ıployee for the employer or its parent, subsidiary, or affiliated enti- s, listed on such attorney's application, whichever shall first occur; *ovided, however,* that if such attorney, within thirty days of ceasing to an employee for the employer or its parent, subsidiary, or affiliated tities listed on such attorney's application, becomes employed by other employer for which such attorney shall solely perform legal rvices, such attorney may maintain his admission under this Rule by omptly filing with the Clerk of the Supreme Court a statement to ch effect, stating the date on which his prior employment ceased and s new employment commenced, identifying his new employer and affirming that he shall not provide legal services, in this Common- ealth, to any other individual or entity. In the event that the ıployment of an attorney admitted under this rule shall cease with no bsequent employment by a successor employer within thirty days, ch attorney shall promptly file with the Clerk of the Supreme Court a tement to such effect, stating the date that such employment ased."

THIS NEW RULE IS UNCONSTITUTIONAL!

2. SCR 3.160(4)

Paragraph (4) of SCR 3.160 shall read:

"Neither the Kentucky Bar Association nor its officers, agent delegates or members shall be liable to any member of the bar nor any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial."

NEW RULE WRITTEN AFTER THE C.F.C. WAS SUED

3. SCR 3.830

A new rule, SCR 3.830, shall read:

"Rule 3.830 Kentucky IOLTA Fund

The Kentucky Bar Foundation, Inc., a non-profit corporation, sha maintain a special fund for the purpose of depositing interest fro members trust accounts and the name of the fund shall be the Ke tucky IOLTA Fund.

(1) Administration of the Fund. For the purpose of administe ing the funds deposited in the Kentucky IOLTA Fund, the Kentuc Bar Foundation is hereby authorized to create a separate Board Trustees to administer this Fund, which shall consist of nine (members of the Association. The Chief Justice of the Supreme Court Kentucky, or a member of the Supreme Court designated by him, sha be a member of the Board of Trustees of the IOLTA Fund. Th President of the Kentucky Bar Association shall serve as a member the Board, and the remaining members shall be seven (7) attorneys, o of whom shall be from each Supreme Court District of the Commo wealth.

(A) Members of the Board of Trustees from the Supreme Cou Districts shall be appointed by the Board of Governors of the Kentuc Bar Association and approved by the Supreme Court. Of the seven members first appointed, three (3) shall be appointed for one (1) ye two (2) for two (2) years; and two (2) for three (3) years. Appointmer shall be made for a three-year term. Members may be reappointed, b no members shall serve more than two (2) successive three-year ter Each member shall serve until a successor is appointed and qualifie Vacancies occurring through death, disability, inability or disqualific tion to serve, or by resignation, shall be filled for the remainder of t vacant term in the same manner as the initial appointments are ma by the Court. The members of the Board of Trustees of the Kentuc IOLTA Fund shall serve without compensation, but shall be paid th reasonable and necessary expenses incurred in the performance of th duties. Until such time as the Fund shall have adequate reserv funding for the Board of Trustees and any necessary staff shall provided by the Association. The staff support for the Board of Tr ees shall come from the Association and the staff shall be paid

EXHIBIT 3

STATE BAR ASSOCIATION SUGGESTS MENTOR'S FOR LAW STUDENTS

Courier Journal

5-12-84 E 7

by : Andy Wolfson

In the golden days of yore, attorneys to be would read the law in office apprenticeships, never setting foot inside a law school.

But today, some law students never set foot inside a law office until they land a job or start their own practice, after graduation.

The result, all too often, according to veteran attorneys and judges, is legal bungling that damages clients cases and sometimes leads to disbarment of you ng lawyers.

To give law students a better taste of the lawyer's life and the ethical challenges he faces, Kentucky Bar Association leaders have proposed a novel program to hook up law students and attorneys.

Under the proposal, all law students in the state would have to sign up with a "mentor" a practicing attorney or judge with whom the student would meet as often as once a month during 3 years of law school.

The mentor would report on the students "Character" to a bar committee that ultimately determines if the candidate is fit to practice law.

To its proponents, the mentor program would give law students an adviser to lean on and a chance to see legal problems "in the flesh."

It would also instill students with the notion that law is a "profession, not a plumber's trade." says Charles Landrum, former state bar association president.

But critics say they fear that young law students will never develop "meaningful relationships" with attorneys charged with judging their character.

A mentor must be like a psychologist or a priest, a confidential friend friend, not an evaluator," said Lee Huddleston, a young Bowling Green attorney and law school instructor.

The mentor program is part of a sweeping set of proposals before the Kentucky Supreme Court that would reshape the way new attorneys are admitted to practice in the state.

The proposal drew both praise and fire at a public hearing yesterday at the Galt House in Louisville.

The hearingg was held in conjunction with the annual meeting of the state bar association.

The supreme court is expected to decide on the proposals within the next month.

Joe Savage, a Lexington trial attorney who helped draw up the mentor program, likened it to mentors to "Big Brothers" who would advise and counsel law students . Students could not be required to do legal work for their mentors.

Savage contends that regular evaluations by a mentor would be markedly superior to the perfunctory five minute interview with a "character & Fitness" committeethat bar candidates now under go, a session many lawyers regard as meaningless.

However, some critics yesterday suggested that every monthly meetings with law students wouldn't be enough for a mentor to accurately judge a students character and fitness to practice law.

Lexington attorney Norrie Wake said he had recommended for practice one person he knew on a daily basis. Now he thinks the attorney should be disbarred.

Other attorneys suggested that a cumpulsory

"internship" with lawyers would accomplish far more than the mentor program,; however, Savage said the bar asssociation has already rejected that idea as unworkable.

Under the mentor proposal, all first year law students intending to practice in Kentucky would be required to sign up for a mentor.

Those who failed to obtain mentors should be "double checked" and double checked and double checked." Those who failed to obtain mentors could still apply to be admitted to the bar, but their character and fitness would be subject to intensive investigation and scrutiny.

One retired judge said yesterday that those who fail to sign up for mentors should be "double checked and double checked and double checked."

Under the most far reaching change discussed yesterday, a new sever man ,seven lawyers, Kentucky dmissions Commission ! would oversee the process f admitting attorneys to practice in Kentucky.

Admission would still hinge on passing the bar xam, and approval by the fitness committee.

Savage said the idea is to "centralize authority.

Ultimate decisions on admissions to the bar would remain with the Kentucky Supreme Court, which would appoint the ADMISSION COMMISSION.

According to savage, the commission would not work work o to limit the number of attorneys in Kentucky.

But Stuart Lampe, a Louisville, attorney and one of three state bar examiners, said that is exactly the impression the public will get.

"The public already thinks we're a closed agency." Lampe said. This will make the public even more unhappy."

Lampe also predicted that the change would open the commission to antitrust suits from students who fail to win admission to the bar.

"The very body that governs the bar will be deciding who becomes a member of it," Lampe said.

Under one thorny proposal, law students who fail the Kentucky Bar exam three times would be barred from taking it again.

Kentucky had such a rule, but it was voted out by the state Supreme Court in 1980 after a federal court ruled it was unconstitional. However, the federal ruling was reversed.

Supporters of the three times and you're out rule argue that candidates who repeatedly fail the exam are likely to make bad lawyers and bring the bar into public disrepute.

But several young lawyers said the measure would strike hardest against minority law students many of whom have had trouble passing the exam in Kentucky.

EXHIBIT 4

6-16-85 CJ Sunday A-5

FBI, BAR GROUP TRADED INFORMATION, PAPERS SAY

NEW YORK TIMES NEWS SERVICE

NEW YORK-The Federal Bureau of Investigation and a lawyer organization secretly exchanged information about bar applicants for four decades, according to newly disclosed FBI documents.

Beginning in 1936 and continuing through 1976 the documents show, the FBI furnished the National Conferences of Bar Examiners with details of the organizational use and political beliefs of people applying to practice law.

The arrangements , which the bureau insisted be kep "strictly confidential," are described in an article to appear tomorrow in the NATIONAL LAW JOURNAL.

The FBI documents were furnished by the government to the National Lawyers Guide, which has filed a civil suit in Federal District Court in New York charging the federal government with harassment.

The bar examiners group, a private organization based in chigago that help state and local bar association investigate the character & fitness of bar applicants, ended the relationship with the FBI IN 1976.

According to the documents, the FBI initially sought authorization from the Justice department before supplying the bar group with any information. In 1954, however, Herbert Brownwell, then the attorney general gave blinnket permission for the FBI to supply the information.

The bureau told the bar group about such activities by applicants as criticizing decisions of the US Supreme Court, lending support to labor unions or civil rights cases. Or participating in functions sponsored by the National Lawyers Guild.

According to the confidential memorandum, the files of the National Conference of Bar Examiners were also available to the bureau for many years.

EXHIBIT 5

NEW 1989-1990 BAR APPLICATION
AUTHORIZATION AND RELEASE
1989 Kentucky Bar Exam

To Whom It May Concern:

I, _____ having filed an application with the Kentucky Board of Bar Examiners and fully recognizing the responsibility to the Public, the Bench, and the Bar of the State lodged with the Character and Fitness Committee by the Supreme Court of Kentucky under the Rules of the Supreme Court to determine moral character and fitness for the practice of law permitting only those of high character and integrity to be admitted to the Bar of Kentucky, hereby authorize and request every medical doctor, school official, and every other person, firm, officer, corporation, association, organization or institution having control of any documents, records or other information pertaining to me relevant to my good moral character and fitness to perform the responsibilties of an attorney, to furnish any such documents, records and other information to said Committee, or any of its representatives, and to permit said Committee, or any of its representatives, to inspect and make copies of any such documents, records and other information including but not limited to any and all medical reports, laboratory reports, X-rays, or clinical abstracts which may have been made or prepared pursuant to, or in connection with, any examination(s), consultation(s), test(s), evaluation(s), of the undersigned. I understand that deliberations and records relating to moral character and fitness are confidential as set out in the *Rules of the Supreme Court of Kentucky*, Rule No. 2.120

I hereby authorize all such persons as set out above to answer any inquiries questions, or interrogatories concerning the undersigned which may be submitted to them by

the Kentucky Character and Fitness Committee or its authorized representative, and to appear before said Committee, or its authorized representative and to give full and complete testimony concerning the undersigned, including any information furnished by the undersigned. I hereby relinquish any and all rights to all information in any form submitted to the Character and Fitness Committee, or its authorized representative, and fully understand that I shall not be entitled to have disclosed to me the contents of any of the foregoing.

I hereby release, discharge and exonerate the Kentucky Character and Fitness Committee, or its authorized representative, all such persons as set out above who shall comply in good faith with the authorization and request made herein from any and all liability of every nature and kind growing out of or in anywise pertaining to the furnishing or inspection of such documents, records or any other pertinent information or the investigation made by said Committee on Character and Fitness, or its authorized representative. The undersigned further waives absolutely any privilege he she may have relevant to his/her good moral character and fitness to perform the responsibilities of an attorney under Kentucky laws.

In witness whereof, I have set my hand and seal this _____ day of _____, 19____.

_____

Signature of Applicant

State of_____

County of_____

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

Notary Public

My Commission Expires